

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

SAMUEL J. DIAZ,	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 16-636S
	:	
LT. ANMRAL,	:	
Defendant.	:	

**REPORT AND RECOMMENDATION**

Patricia A. Sullivan, United States Magistrate Judge.

Plaintiff Samuel J. Diaz filed a motion for summary judgment in this case on April 20, 2017. ECF No. 36. As a prisoner at the Adult Correctional Institutions, Plaintiff is a *pro se* litigant, who has sued a correctional officer for the use of excessive force when Plaintiff was placed in segregation. ECF No. 1. As the answer (ECF No. 13) to the complaint makes plain, Defendant denies the claim. The case is still in the pleading phase in that Plaintiff intends to file an amended complaint, but has not yet done so. Discovery is at a very early stage in that Plaintiff has propounded some discovery and Defendant has provided some responses, but Plaintiff plans to move to compel. Meanwhile, with the scope of the amended complaint still unknown, Defendant has refrained from propounding its own written discovery or from proceeding with depositions. In short, the case appears to be at a very early stage and also seems to be redolent with fact issues that would render summary judgment in favor of Plaintiff unlikely. And the summary judgment motion itself supplies the Court with no legal argument and no explanation why summary judgment should be granted.

A hearing on this motion and many others was held on April 28, 2017. During the hearing, Plaintiff explained that he had not understood the purpose of a motion for summary

judgment and, based on reading done after the motion was filed but before the hearing, had come to realize that he probably should not have filed it at this time.

Based on the foregoing, I recommend that Plaintiff's motion for summary judgment (ECF No. 36) be denied without prejudice to Plaintiff's ability to make a summary judgment motion at the appropriate time and in compliance with the applicable Federal Rules of Civil Procedure, the Local Rules of the Court and the scheduling order previously entered in this case. ECF No. 19.<sup>1</sup>

Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days after its service on the objecting party. See Fed. R. Civ. P. 72(b)(2); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1st Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Patricia A. Sullivan  
PATRICIA A. SULLIVAN  
United States Magistrate Judge  
April 28, 2017

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<sup>1</sup> The parties are reminded that this case is assigned to Chief Judge Smith, who requires a pre-filing conference in connection with a motion for summary judgment.